

1 Gregg McLean Adam, No. 203436
Jonathan Yank, No. 215495
2 Gonzalo C. Martinez, No. 231724
Amber L. West, No. 245002
3 **CARROLL, BURDICK & McDONOUGH LLP**
Attorneys at Law
4 44 Montgomery Street, Suite 400
San Francisco, CA 94104
5 Telephone: 415.989.5900
Facsimile: 415.989.0932
6 Email: gadam@cbmlaw.com

7 Attorneys for Plaintiff and Cross-Defendant
San Jose Police Officers ' Association

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA

11 SAN JOSE POLICE OFFICERS '
12 ASSOCIATION,

13 Plaintiff,

14 v.

15 CITY OF SAN JOSE, BOARD OF
16 ADMINISTRATION FOR POLICE
AND FIRE DEPARTMENT
17 RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10, inclusive,

18 Defendants.

19
20 AND RELATED CROSS-COMPLAINT
AND CONSOLIDATED ACTIONS
21

No. 1-12-CV-225926
(and Consolidated Actions
1-12-CV-225928, 1-12-CV-226570,
1-12-CV-226574, 1-12-CV-227864,
and 1-12-CV-233660)

**DECLARATION OF JOHN ROBB IN SUPPORT
OF PLAINTIFF SAN JOSE POLICE
OFFICERS' ASSOCIATION'S OPPOSITION
TO MOTION FOR SUMMARY
ADJUDICATION**

Date: June 7, 2013
Time: 9:00 a.m.
Place: Dept. 2
Judge: Hon. Patricia M. Lucas

Complaint Filed: June 6, 2012
Trial Date: July 22, 2013

1 I, John Robb, declare and say:

2 1. I am employed by the City of San Jose as a Police Officer and am a
3 member of the SAN JOSE POLICE OFFICERS' ASSOCIATION ("SJPOA"). As a
4 result of my employment with the City of San Jose and affiliation with the SJPOA, I am
5 familiar with the facts in this matter, as well as those set forth in this Declaration. If
6 called upon as a witness, I could and would testify competently to these facts.

7 2. I submit this declaration in support of the SJPOA's Opposition to City of
8 San Jose's Motion for Summary Adjudication ("MSA").

9 3. I have been a Police Officer since 1989, when I was hired by the Airport
10 Police for the City of San Jose. I have been employed as a Police Officer with the San
11 Jose Police Department since 1993. I was promoted to Sergeant in 2003.

12 4. SJPOA is a union representing Police Officers working for the City of
13 San Jose ("Police Officers"). I have been Vice President of the SJPOA since November
14 2011. Before that, I was on SJPOA's Board of Directors from January 2010 to November
15 2011.

16 5. I am familiar with the collective bargaining history between the SJPOA
17 and the City of San Jose as the parties negotiated their Memoranda of Understanding
18 ("MOA"), including effects on Police Officers' retirement benefits. I am also familiar
19 with various forms of compensation the City has offered me and other Police Officers,
20 including deferred compensation. This includes retirement pension benefits,
21 Supplemental Retirement Benefit Reserve ("SRBR") benefits and retiree healthcare
22 benefits.

23 6. I have been directly involved on behalf of SJPOA and its members in
24 interest arbitrations between SJPOA and the City of San Jose ("the City"). In that
25 capacity, I rely on my knowledge of the rules pertaining to interest arbitration, including
26 the rules within the City Charter, which requires interest arbitration for disputes between
27 the City and Police Officers regarding wages, hours, and terms and conditions of
28 employment upon declaration of an impasse by one of the parties during negotiations.

CBM-SF585040.5

1 7. In 2011, the City began a campaign to reduce all City employees'
2 pension benefits, including those of Police Officers, by threatening to declare a fiscal
3 emergency and by sponsoring a voter ballot initiative, Measure B, to attack pension rights.
4 The City's mayor or his representatives made repeated public assertions that, by Fiscal
5 Year ("FY") 2015-16, the City's retirement contribution costs would reach \$650 million
6 per year.

7 8. SJPOA filed this action on behalf of its members after the voters enacted
8 Measure B. SJPOA's First Amended Complaint alleged, *inter alia*, that Measure B
9 violated Police Officers' vested pension rights created by the San Jose City Charter and
10 San Jose Municipal Code, and that it violated certain rights under its collective bargaining
11 agreement ("memorandum of agreement" or "MOA"). Specifically, it alleged Measure B
12 sections 1506-A, 1507-A, 1509-A, 1510-A, 1511-A, and 1512-A violated the vested rights
13 doctrine under the California Contracts Clause, was a Takings, and violated Due Process.
14 SJPOA alleged sections 1506-A and 1512-A also violated its collective bargaining
15 agreement. The wrongs alleged all flow from Measure B and all sections of Measure B
16 were enacted at the same time.

17 **Retirement Benefits Are Deferred Compensation and**
18 **Inducement to Continued Service**

19 9. Retirement benefits are part of the City's total compensation package, as
20 a form of deferred compensation. Police Officers are offered the retirement benefits as
21 inducement to work for the City of San Jose. For example:

22 a. The City provides a long-term service incentive to Police Officers
23 as follows. Officers who serve the City 20 years receive a pension using the following
24 formula set forth in the current Police Benefits Fact Sheet issued by the Department of
25 Retirement Services: 2.5% of final compensation times 20 years (50% of final
26 compensation), but Officers who serve longer than 20 years receive pension benefits using
27 an accelerated figure of 4% annually (capped at 90%). I received copy of this sheet in my
28

1 capacity as a SJPOA Board Member and then later as Vice President of SJPOA during the
2 course of negotiations. **Attached as Exhibit A is a true and correct copy of that**
3 **document.**

4
5 b. The City has issued recruiting flyers and booklets stating that Police
6 Officers are provided pensions from City of San Jose's Retirement Plan. Several flyers
7 state: "Up to 90% of Salary for Retirement (30 years of service) with 3% Annual Cost of
8 Living Increase." I received these documents in my capacity as a SJPOA Board Member
9 and then later as Vice President of SJPOA. **Attached as Exhibit B are a true and**
10 **correct copies of those documents.**

11 c. A recruiting flyer issued by the City in 2002 states: "Retirement
12 options begin with 20 years of service and age 55 for 50% of salary. Regular retirement is
13 25 years of service and age 50 for 65% of salary. 30 years of service provides an 85%
14 retirement with a guaranteed cost of living raise of 3% every year after retirement for all
15 plans." I received these documents in my capacity as a SJPOA Board Member and then
16 later as Vice President of SJPOA. **Attached as Exhibit C is a true and correct copy of**
17 **that document.**

18 d. The City's 1980-1981 recruiting booklet at page 4, states: "Security
19 for the future means fully-paid life insurance coverage, and a retirement program that
20 allows you to retire at age 55 after 20 years of service, and draw 50% of the salary you
21 earned during the last year you worked. For every year after your first 20 years, you'll
22 receive an additional 2 ½ %, up to a maximum of 75% of your last year's salary." It
23 similarly states: "If you retired after 30 years at a \$24,000 income level, your retirement
24 would be equivalent to having \$200,000 in the bank drawing interest at 12% per year.
25 Saving that amount would be difficult on your own, but together you and the San Jose
26 Police Department can provide for your long-range financial security." I received this
27 document in my capacity with SJPOA from SJPOA's historical records. **Attached as**
28 **Exhibit D is a true and correct copy of that document.**

Police Officers' Pension Contribution Rates

10. Police Officers and the City make monthly contributions to fund the 1961 Police and Fire Retirement Plan ("P&F Retirement Plan"). The P&F Retirement Plan Board ("Board") sets specific rates of contributions required of all Police Officers. Those rates are adjusted each fiscal year by the Board—and not the City Council—based on the actuarial analysis reflected in the Board's Comprehensive Annual Financial Reports ("CAFR").

11. As a Plan member and SJPOA member, I have access to the CAFR issued by the Board as well as the Annual Reports, which were the precursor to the CAFR.

12. Based on my knowledge as a participant in the P&F Retirement Plan, my role in SJPOA, and as reflected in the CAFR and Annual Reports, Police Officers' contributions to the P&F Retirement Plan are not fixed and are subject to change from one fiscal year to the next.

13. Based on my review of union records, all current Police Officers were hired after 1979. These union records reflect the year each officer started his or her service with the San Jose Police Department. Those records are accurate because they are provided by the City of San Jose and regularly maintained in the ordinary course of business.

14. Based on my knowledge as a participant in the P&F Retirement Plan, my role in SJPOA, and as reflected in the CAFR and Annual Reports, Police Officers have not paid directly into general pension unfunded actuarial accrued liability ("UAAL") other than to pay for new or increased benefits.

15. However, if applied to Police Officers, Measure B Section 1506-A will require Police Officers to pay for 50% of now-existing UAAL by decreasing their salary by 4% per year, with a maximum decrease of 16%.

16. I am not aware of any agreement between the SJPOA and the City whereby Police Officers made contributions to UAAL unrelated to new or increased

1 benefits. The parties' 2010-2011 MOA, Article 5.1 contains an agreement between
2 SJPOA and the City where the parties agreed that Police Officers would make "One-Time
3 Additional Retirement Contributions" in the amount of 5.25% of their pay. This, too, did
4 not involve payment into the general pension UAAL. The payments were made to and
5 credited to Police Officers' individual retirement accounts. Additionally, those
6 contributions were "one-time" only during 2010-2011, and were not "ongoing."

7 17. These increased Police Officer contributions allowed the City to pay less
8 money for its share of the normal cost contribution. Specifically, because Police Officers
9 contributed more money for normal costs, the City had additional funds they would have
10 otherwise used to pay for normal costs. Thus, as set forth in Article 5.1 of the 2010-2011
11 MOA, retirement contributions were as follows:

Police and Fire Department			
	City	Employee	Total
Prior Contribution Rates for FY 2009-2010	44.58%	15.57%	60.15%
Contribution Rates with One-Time Additional Employee Contributions FY 2010-2011	39.33%	20.82%	60.15%

17 18. SJPOA understood that although Police Officers' salary was temporarily
18 reduced by 5.25%, Officers' contributions were credited to their individual accounts. In
19 accordance with the 2010-2011 MOA, the one-time additional contributions were treated
20 in the same manner as any other employee contributions. Thus, I made these
21 contributions on a pre-tax basis through payroll deductions; the contributions were
22 credited to my individual retirement account; and they were subject to withdrawal, return
23 and redeposit in the same manner as any other employee contributions. I understand this
24 was true as to all Police Officers.

25 19. Our individual pension accounts each reflected an additional 5.25%
26 beyond our regular pension contributions in FY 2010-2011 because of Police Officers'
27 increased contribution, as shown in my individual annual statements. **Attached as**
28 **Exhibit F are true and correct copies of my individual annual retirement statement**

1 for FY 2010-2011. I received these written statements from the City of San Jose.

2 The UAAL figure is not listed on employees' annual pension statement sent each year.

3 20. Had SJPOA members paid into UAAL, those contributions would not
4 have been credited to my and other Police Officers' individual retirement accounts. For
5 example, when several Police Officers were laid off in 2010-2011, many of them had their
6 5.25% contributions refunded to them per their request.

7 21. Additionally, based on a legal memorandum SJPOA obtained from the
8 P&F Retirement Board, it appears that Police Officers do not pay UAAL. Attached as
9 **Exhibit E** is a true and correct copy of a Memorandum to the Board of Administration of
10 the San Jose Police and Fire Department Retirement Plan from Saltzman & Johnson Law
11 Corporation ("the 1998 Saltzman Memorandum") dated February 19, 1998. That
12 memorandum states as follows:

13 **LEGAL OPINION**

14 1. It is the opinion of this office that, in periods when the
15 retirement fund has an actuarial surplus, it is consistent with the San
16 Jose City Charter and Municipal Code for the City, and not the
members, to have the actuarial surplus amortized to reduce its
contribution rate.

17 2. It is the opinion of this office that, in periods when the
18 retirement fund has an actuarial deficit, the San Jose Municipal
19 Code requires the City, and not the members, to fund this deficit in
a (sic) actuarially sound manner.

20 3. Both of these opinions are primarily premised upon San Jose
Municipal Code section 3.36.1550D.

21 I received the 1998 Saltzman memorandum in my capacity as a SJPOA Board Member
22 from a member Retirement Board for the Police and Fire Retirement Plan.

23 **Police Officers' Retirement Healthcare Benefits**

24 22. Upon retirement, Police Officers receive retirement healthcare benefits,
25 funded by contributions by Police Officers and the City on a 1:1 ratio, including normal
26 costs and UAAL.

27 23. The parties' 2011-2013 MOA caps Police Officers' contributions toward
28 retiree healthcare. Under Article 50.3, any increase in contribution rates for Police

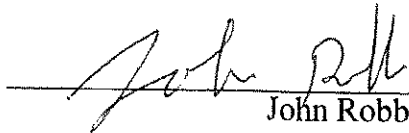
1 Officers is capped at 1.25% of pay per year. And under Article 50.4, Police Officers'
2 payment for retiree healthcare is capped at 10% of their pay. If Police Officers' calculated
3 contributions exceed 10%, the parties have agreed to be bound under the MOA to meet
4 and confer to determine how to pay the excess.

5 24. If Measure B Section 1512-A is applied to Police Officers, their
6 contributions can exceed the yearly and overall contractual caps in the MOA, and Police
7 Officers would not be able to invoke the meet and confer provisions of the MOA the
8 parties negotiated to determine how to pay for any contributions above 10%.

9 25. Upon retirement, the City has paid the premium for the "lowest cost"
10 healthcare plan for retirees. "Lowest cost" plan was defined with reference to the
11 healthcare plan available to active Police Officers. The City has historically tied retiree
12 healthcare premium contributions to what active Police Officers received and prior to
13 November 2012, the City has never offered retirees a plan not connected to what active
14 Police Officers are actually in.

15 26. If Measure B Section 1512-A is applied to Police Officers, they will lose
16 their right upon retirement to City payment of the premium for the lowest cost healthcare
17 plan available to active Police Officers because Section 1512-A defines "lowest cost" with
18 reference to healthcare plans made available all active City employees, and not just active
19 Police Officers.

20 I declare under penalty of perjury under the laws of the State of California that
21 the foregoing is true and correct and that this declaration is executed this 3 day of
22 May, 2013, SAN JOSE, California.

23
24 
25 John Robb
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